the very words used by the grantor in his deed as including the space as well as the coal; in the latter, due to the nature of the estate in the space (a descendible freehold), it is not only necessary to construe the grantor's words as including the space as well as the coal, but as mentioned above, a condition must also be implied in the deed.

Taking all things into consideration, it appears that unless a different intention of the grantor is clearly shown, the grantee of the coal can be the owner of the coal only and has merely an easement in the space occupied by it and in the substratum for mining it.

If this is conceded, there remains but one small point to discuss, and that is, what is the extent of the easement? The answer seems very obvious. It is certainly only for mining and removing the coal on the grantor's land. The circumstances would be very exceptional indeed when it would be any broader.

B. D. A.

GIFTS OF PERSONAL CHATTELS—INCOMPLETE ASSIGNMENTS OF CHOSES IN ACTION NOT GOOD AS DECLARATIONS OF TRUST.—Gifts of personal chattels may be made only by delivery to the donee of possession of the tangible personal property itself, or by delivery of some evidence of possession which would entitle the donee to the subject matter of the gift as against all the world, and this only where it is impracticable or impossible to deliver the subject matter itself. Delivery of the subject matter of the gift to a trustee who accepts the trust is equivalent to the act of the donor in delivering the possession of tangible personal property to the donee. This proposition is so well established that citation of authority is unnecessary.

The rule as above stated has but two exceptions. The first is that acquiescence of the donor in the previously acquired possession of the donee is held to be sufficient evidence from which to imply delivery of possession.[1] The second, and only remaining exception, is the case of a gift by way of declaration of a trust. In such gifts "the donor does not part with the possession of the subject matter of the gift; but retaining it, declares that he holds it in trust for the donee".[2]

The principle seems to be well settled in the United States that as to gifts of choses in action "a donor is legally put to his election whether he will *assign,* or *declare a trust;* and if he elects the former, as is shown by his attempted assignment, the gift must stand or fall as the donor designed to make it; and if ineffectual

[1] See Shankle *v.* Spahr, 121 Va. 598, 607, 608, 93 S. E. 605; Russell's Ex'rs. *v.* Passmore (Va.), 103 S. E. 652.

[2] See *"Gifts of Personalty"*, by Prof. Graves, 1 VA. LAW REG. 871, 878.

as an assignment, it can derive no assistance from the doctrine of declarations of trust." [3]

Several of the earlier English cases, notably *Morgan* v. *Malleson*,[4] and *Richardson* v. *Richardson*,[5] held that words implying an intention to bestow a present gift constitute an enforceable donation. These decisions were based on the ground that such words are equivalent to a formal declaration of trust. A subsequent Pennsylvania case [6] declared, *obiter*, that this doctrine was "founded in reason and good sense" but it seems that the vast preponderance of modern authority considers it unsound.[7]

In a very recent Virginia case the doctrine as laid down by Professor Graves in 1 VA. LAW REG. 879, 880 was followed and approved.[8] In this case certain sons, being indebted to their father, proffered payment of the amount of their indebtedness. Payment was refused, the father stating that he desired the money paid to the two married sisters of the debtors. The sons consented, and agreed to make payment to the designated parties. Before such payment was made, however, the father died, and the effort of the sisters to secure the amount of the debt failed, the court holding that no valid transfer to the original debtors as trustees had occurred, and refusing to sustain the transaction as a declaration of trust by the father. This ruling is in accordance with the entire weight of authority in Virginia and is so firmly established that no other ruling could be justified unless based on statute.

W. R. A.

ALIMONY—AWARDING SPECIFIC PORTION OF HUSBAND'S ESTATE.—In the absence of express statutory authority, the court ordinarily possesses no power to vest in a wife title to a specific portion of the husband's real estate as alimony. *Lovegrove* v. *Lovegrove* (Va.), 104 S. E. 804.

ADVANCEMENTS—HOTCHPOT.—Under the older line of common law decisions the doctrine of advancements was confined to cases of intestacy and was perhaps never applicable to a case in which there was a will of any of the property.[1] The doctrine was based upon the presumed desire of the donor to equalize the distribution of his estate amongst his children and it was thought that the very foundation of the rule prevented the doctrine from applying unless the ancestor died wholly intestate.[2]

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[3] Prof. Graves, in 1 VA. LAW REG. 879, 880; Ross *v.* Milne, 12 Leigh 204, 222, 37 Am. Dec. 646; Poff *v.* Poff (Va.), 104 S. E. 719.
[4] L. R. 10 Eq. 475. [5] L. R. 3 Eq. 686.
[6] Helfenstein's Estate, 77 Pa. St. 326.
[7] Young *v.* Young, 80 N. Y. 422, and cases there cited.
[8] Poff *v.* Poff, *supra*.
[1] Arthur *v.* Arthur, 10 Barb. (N. Y.) 24. See Hawley *v.* James, 5 Paige (N. Y.) 318; Payne *v.* Payne (Va.), 104 S. E. 712.
[2] Grattan *v.* Grattan, 18 Ill. 167, 65 Am. Dec. 726. See Jaques *v.* Swasey, 153 Mass. 596, 12 L. R. A. 566 and note.